

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

JAMES and SUSANNE SCHOLZ,

Respondents,

v.

WAYNE “ROSS” SCHENK and STACY MICHELLE SCHENK,

Appellants.

DOCKET NUMBER WD78292

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 1, 2016

APPEAL FROM

The Circuit Court of Johnson County, Missouri
The Honorable W. Sue Dodson, Judge

JUDGES

Division Two: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

James and Susanne Scholz
Mabelvale, AR

Respondents, *pro se*,

Abbie Rothermich
Warrensburg, MO

Attorney for Appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

house or usual place of abode; and service upon an agent authorized by appointment or required by law to receive service of process.

3. When abode service is chosen, the process must be left with some person of the individual's family over the age of fifteen years. However, Missouri courts have not strictly defined "family" as meaning blood relation. Rather, courts have interpreted the rule to permit service of process on a member of the household. If the relation between an individual and the other persons of the household is of a permanent and domestic character and not intended to be merely temporary, he is regarded as a person of the family upon whom service of process may be made.
4. The Scholzes used a special process server to obtain abode service. Accordingly, the return of service must show on its face that the service was to a member of the Schenks' family over the age of fifteen years. If the return is facially valid, it is considered prima facie evidence of the facts recited therein.
5. The Schenks do not challenge the facial validity of the return, which established service upon a "roommate." So it falls to the Schenks to rebut this prima facie evidence by clear and convincing evidence corroborating their denial of having been served.
6. The general rule is that oral comments by a trial judge should not be considered where findings of fact and conclusions of law have not been requested. Any gratuitous oral pronouncements are not part of the trial court's order or judgment and may be considered only as an explanation of the order or judgment. Only where a judgment is ambiguous, uncertain, or incomplete, will an appellate court look to the contemporaneous oral statement of the judge, and only to the extent that it may shed light upon the view the court took of the case during its progress and at the time of its judgment.
7. The judgment here contains no ambiguity whatsoever on the issue of service. Rather, it plainly states that the Schenks were "duly served with the[] petition."
8. Accordingly, the trial court's gratuitous statement at trial that it "might be inclined to rule for the Schenks," but for the fact that the face of the return showed that the process server had made sufficient inquiry into whether the woman who accepted service resided with the Schenks, was merely a gratuitous comment, and did not show that the finding of service was based on a misapplication of the law.
9. Instead, where, as here, there is no ambiguity in the judgment and neither party requests that the court make specific findings of fact or conclusions of law, we must resolve all factual issues in accordance with the result reached and must affirm the judgment under any reasonable theory supported by the evidence.
10. The return of service included the letters "R/M," which the trial court interpreted as meaning that the woman was the Schenks' roommate. A roommate can be considered a family member for purposes of accomplishing abode service. The trial court was entitled to believe the Schenks' testimony that the woman did not reside with them. Accordingly,

there was sufficient evidence to support the trial court's finding that the Schenks had been properly served.

Opinion by: Karen King Mitchell, Judge

March 1, 2016

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.